

6-3001-8383-2
D-5831, R-4320

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA TRANSPORTATION REGULATION BOARD

In the Matter of the Application
of Burlington Northern Railroad
Company for Authority to Transfer
Agency Service for the Kelly Lake,
Minnesota Agency to Burlington
Northern Railroad Company's
Centralized Service Agency at
Superior, Wisconsin

FINDINGS OF FACT,
CONCLUSIONS,
RECOMMENDATION,
AND MEMORANDUM

The above-entitled matter came on for hearing before Allan W. Klein,
Administrative Law Judge, on January 6, 1994, in Hibbing, Minnesota.

Appearing on behalf of the Applicant herein, Burlington Northern Railroad
Company, was Alfonse J. Cocchiarella, of the firm of Spence, Ricke & Thurmer
P.A., 600 Degree of Honor Building, 325 Cedar Street, St. Paul, Minnesota
55101.

Appearing on behalf of the Intervenor herein, Transportation
Communications International Union (hereinafter "TCU" or "the Union"), was
Thomas J. Dwyer, State Legislative Director, Transportation Communications
Union, 3948 Central Avenue Northeast, Suite 203, Columbia Heights, Minnesota
55421.

The record in this matter closed on January 6, at the conclusion of the
hearing.

Notice is hereby given that, pursuant to Minn. Stat. § 14.61, and Minn.
Rule pt. 8920.3700, exceptions to this Report, if any, by any party must be
filed within 20 days of the mailing date hereof with the Transportation
Regulation Board, Minnesota Administrative Truck Center, 254 Livestock Exchange
Building, 100 Stockyards Road, South St. Paul, Minnesota 55075. Exceptions

must be specific and stated and numbered separately. When exception is taken that a Finding of Fact is unsupported or contrary to substantial evidence in the record, a corrected finding must be submitted. If a transcript is available, specific reference to the transcript supporting the correction to the finding must be submitted in support of the exception. If desired, a reply to exceptions may be filed and served within ten days after the service of the exceptions to which reply is made. Exceptions and replies must contain supporting written arguments, and must be served upon the parties. Oral argument before a majority of the Board may be permitted to all parties adversely affected by the Administrative Law Judge's recommendation

who request such argument. Such request must accompany the filed exceptions, reply, and an original and five copies of each document must be filed with the Board.

The Minnesota Transportation Regulation Board will make the final determination of the matter after the expiration of the period for filing exceptions as set forth above, or after oral argument, if such is requested and had in the matter.

Further notice is hereby given that the Board may, at its own discretion, accept or reject the Administrative Law Judge's recommendation and that said recommendation has no legal effect unless expressly adopted by the Board as its final order.

STATEMENT OF ISSUE

Has the Railroad demonstrated that its proposal to transfer agency service at Kelly Lake to Superior, Wisconsin satisfies the standards contained in Minn. Stat. § 219.85 (1992, as amended)?

Based on all of the files, records and proceedings, herein, the Administrative Law Judge finds the following:

FINDINGS OF FACT

Procedural History

1. On August 31, 1993, the Burlington Northern Railroad Company submitted an application to the Transportation Regulation Board, seeking Board approval for a proposed transfer of agency service from Kelly Lake to the Company's centralized agency at Superior, Wisconsin. Attached to the application was the required fee, as well as a map illustrating the various affected localities, a list of affected customers, and a series of accounting exhibits relating to Kelly Lake and its assigned blind sidings.

2. On September 10, 1993, the Board published a Notice of Opportunity for Hearing in its weekly calendar. The Notice indicated that any person could file a written objection to the petition so long as it was sent to the Board by October 11, 1993. In addition to publishing the notice in its weekly calendar, the Board also served copies of the Notice on the Railroad, the TCU, Mn/DOT, the United Transportation Union, the Mayor of the City of Hibbing, and appropriate legislators.

3. By letter dated October 11, 1993, the Transportation Communication Union filed a Petition to Intervene and a request for a public hearing in the

matter with the Board. Copies were served on the Railroad's attorney, as well as various Union representatives.

4. On October 29, 1993, the Board published notice of public hearing on this matter, setting a hearing for December 9 in Hibbing. Shortly thereafter, one of the parties noted a conflict with that hearing date, and so the Administrative Law Judge continued the hearing to January 6, 1994. There was no objection to this continuance, and the hearing did, in fact, go forward on that date. It was concluded in less than a day.

Kelly Lake Agency

5. Kelly Lake is located on the western edge of St. Louis County, between Hibbing and Keewatin. The Burlington Northern agency there serves Kelly Lake as well as the following stations:

Hibbing	Coleraine
Virginia	Canisteo
Keewatin	Onega
Moore	Casco
Nashwauk	Fermoy
Calumet	Baden
Marble	Minorca
Bovie	Broeker

These are all on a BN line which runs from Brookston to Gunn, via Kelly Lake.

6. The Kelly Lake agency is staffed by one clerk, who works between 6 a.m. and 2:30 p.m. on a Monday-through-Friday basis.

7. The building where that clerk works is also used by other departments of the Burlington Northern, principally the maintenance department. It is proposed that the building would remain at Kelly Lake for use by the maintenance department and for use by others as needed.

8. The Superior agency is currently open for business seven days per week, 24 hours per day. The Railroad has a total of 21 people employed there in three shifts. The Superior agency has a toll-free telephone line which could be used by Kelly Lake customers on a 24-hour-per-day basis.

9. If this proposal is granted, face-to-face contact with Kelly Lake customers could be handled, upon request, by traveling agents from Superior, the manager of customer service from Superior, the trainmaster (also from Superior), or even a Railroad employee from Grand Rapids. The Railroad has offered to meet face to face with customers when a customer determines that telephone conversation is inadequate.

10. The current agent at Kelly Lake, Frank Anderson, works five days per week, eight hours per day, from 6:30 a.m. to 2:30 p.m. He lives in Wright, which is 46 miles from Kelly Lake. He has seniority since 1963, and thus would be able to secure a job at Grand Rapids or in Superior.

11. Most of the cars which are currently subject to the Kelly Lake agency originate in Superior, at the Allouez taconite terminal. They travel a circular route from Allouez, to Kelly Lake, to taconite facilities, and then back to Allouez. The majority of the cars which are handled by the Kelly Lake

agency are part of unit taconite trains. The clerk at Kelly Lake has no responsibility for unit taconite trains.

12. Coal cars, however, are usually not in unit trains. Instead, they are "odd lots". Of a typical 60 to 80 car freight train, maybe 15 or 20 cars would have coal. The coal comes from Montana, and is destined for electric plants at Hibbing and Virginia. The role of the Kelly Lake clerk in connection with these coal trains is that he does notify the customer of their

arrival, as he does with other freight cars. The Kelly Lake agent does not, however, have any billing responsibility for them. If this petition were granted, the customer would be notified of car arrivals by a clerk from Superior.

13. Currently, if a customer needs empty cars switched to a track, the customer calls the clerk at Kelly Lake. The Kelly Lake clerk, in turn, relays the request to Superior. When the car is available, the clerk at Kelly Lake calls the customer and informs him. If this petition were granted, the customer would call Superior to request a car, and be notified of its availability directly by Superior.

14. Demurrage records are kept by the Railroad's computer system. The information with regard to Kelly Lake customers is entered by a clerk at Superior. Currently, the Kelly Lake agent will fax a notice to the Superior clerk, but it is the Superior clerk who actually enters the data in the computer. If this transfer were granted, all the work would be done at Superior.

15. The Kelly Lake clerk does not have responsibility for train movements. He does not have responsibility for safety compliance, except to the extent that all Railroad employees are responsible for safety matters. The Kelly Lake clerk does have radio contact with train crews, but as noted later on, the Railroad has agreed to install a radio system which will allow clerks in Superior to have the same contact with train crews.

16. The Railroad has put together a plan, which has not yet been finalized or definitely approved, to move all customer service functions to Fort Worth, Texas. The current draft of the plan would have this occurring in 1995 or 1996. The Railroad believes that if this were to occur, customers would use the same toll-free calling system as for Superior, but instead of talking with a clerk in Superior, the customer would be talking with a clerk in Fort Worth.

17. Some trains going through Kelly Lake do contain hazardous materials. However, the Kelly Lake agent has no responsibility for those shipments. Placarding is the responsibility of the shipper. Checking the cars is the responsibility of the train crews. While all Railroad employees, including the agent at Kelly Lake, are charged with visually inspecting any train when it goes by, the agent at Kelly Lake has no unique responsibilities with regard to such a roll-by inspection for either hazardous waste or regular freight.

18. If an accident were to occur, train crews are directed to notify the dispatcher in Minneapolis. It is up to the Minneapolis dispatcher to notify appropriate local emergency units (fire, police, rescue) if their services are required. While a train crew involved in an accident might contact the agent

at Kelly Lake later, their first call is to be made to the Minneapolis dispatcher.

19. Railroad personnel visited with each of the 12 customers who would be directly affected by this proposed transfer. After describing the proposal they left each customer with a "no objection" letter, and asked them to sign and return it. Of the 12 customers who were contacted, six of them submitted written letters of no objection, while six did not. Of the six who

did not, the Hibbing Public Utilities Commission initially did indicate an objection, but after further discussion with the Railroad, they indicated that they had no formal objection to the proposal. There is nothing in the record from this shipper. A representative of the Hibbing Commission attended a portion of the proceeding, but did not make any statement for the record. A representative of the Virginia Public Utilities Department did testify and expressed his concerns about the proposal.

20. The only shipper who testified at the hearing was the power plant supervisor for the Virginia Public Utilities Department. He is responsible for the delivery of coal for the Virginia power plant. Coal comes via the Burlington Northern (which carries it from Montana to Keenan) and the D M & (which carries it from Keenan to Virginia). The Virginia power plant does not have its own coal stockpile -- it uses the railroads as its method of storing coal. However, it must pay demurrage (essentially a rental fee) when it ties up the cars for too long. This method of operation requires intensive scheduling and monitoring of coal shipments to assure that there will be enough coal to fire the plant, but, on the other hand, railroad cars are not left sitting for too long so that there are large demurrage charges. The power plant superintendent is in contact with the Kelly Lake agent almost daily, keeping track of the status of various coal cars. He expressed concerns about how the proposed transfer to Superior would affect his ability to keep track of his cars. He also expressed concerns about a long term plan to transfer all operations to Fort Worth, Texas, indicating that he feared that a person in Fort Worth would not understand the importance of a 30-below temperature prediction for Virginia when it was 60 or 70 degrees above in Fort Worth.

21. When Frank Anderson, the Kelly Lake agent, went on vacation during November of 1993, he was not replaced. Instead, his customers were directed to call Superior for assistance. This happened to coincide with a change of personnel in Superior, so that the initial calls from the Virginia power plant to inquire about the status of coal cars were answered by an inexperienced employee. This resulted in confusion. The new employee did not understand how the Virginia coal cars were handled. He did not know where to look to get the answers to the utility's questions. However, by the end of the two-week vacation period, the problems had been substantially resolved, and the utility was grudgingly satisfied with the Railroad's ability to provide the necessary information.

To answer Virginia's questions currently, the agent at Kelly Lake has to contact either Superior or Grand Rapids to get some of the information. However, the agent at Kelly Lake is able to "translate" the customer's requests into language which other Railroad employees can understand. In addition, the agent at Kelly Lake has radio contact with the local switching train, and the agent is able to pick up a radio and get other information, such as the precise schedule for the train and answers about the status of cars. When the Kelly Lake agent was on vacation, that direct radio access was lost. The Superior

agency does not have the ability to communicate with the switching train directly by radio. Part of Virginia's problems, therefore, came from a new employee who didn't understand the pattern of operations, and part came from Superior's inability to communicate directly with the crew.

22. As part of the proposal to transfer the Kelly Lake operations to Superior, the Railroad is installing a "dial-up radio system" in the whole

Iron Range area, including Kelly Lake, so that a clerk in Superior will be able to be in radio contact with the local switching train at all times. That will allow the Superior agent to provide all of the information that the Kelly Lake agent used to be able to provide to the Virginia power plant and other customers. A radio communications engineer has evaluated the situation, and the Railroad has ordered the necessary equipment to provide the radio communications. It was hoped that the equipment could be installed before winter, but that has not occurred. It is now anticipated the equipment will be installed in the spring of 1994.

23. The Kelly Lake switch engine is based at Kelly Lake, in the sense that it starts and stops there each day. However, all of the directions to that switch train are transmitted by fax from Superior to Kelly Lake, where they are picked up by the train crew. The train crew currently keeps in touch with Superior by telephone or fax. If this proposal were granted, there would be no change in this procedure, except that the Railroad is in the process of installing a radio system that would supplement the current fax and telephone communication with the switching crew.

24. The local switching train runs on a six-day-per-week schedule, and will continue with that schedule regardless of whether or not this transfer is granted. Similarly, the through freight service that currently runs through Kelly Lake will continue, without change, regardless of whether or not this change is granted.

25. The local switching train consists of an engineer, a conductor, and a brakeman.

Financial and Accounting Records

26. The Railroad presented traffic and financial information for the years 1991, 1992 and the first six months of 1993. Kelly Lake, and its assigned blind sidings, handled 148,568 cars in 1991, 145,196 cars in 1992, 72,590 cars for the first half of 1993. In each of those periods, unit trains dominated the traffic. For example, looking at the first six months of 1993, the grand total of forwarded and received carloads was 72,590. Of those, 69,338 represent carloads in unit trains. Unit trains represented 95% of the total carloads.

27. A unit time study for the year 1992 demonstrated that 16% of the available time was used for agency work, while 84% was available for other work. It should be noted, for persons looking at page 3 of the Railroad's statistics, that if anything, these are biased by an error that makes the 16% higher than it ought to be. That error occurs in line 1, relating to waybills forwarded. The exhibits suggest that there were 301 waybills forwarded in 1992. That number, which is taken from page 2, includes unit trains, which

account for 266 of the 301 total. There are no bills of lading or car order activities on the part of the Kelly Lake agent in connection with unit train. Therefore, the 266 should be subtracted from the 301, so that the actual number of waybills handled by that agent would be only 35, rather than 301. Using 35 rather than 301, the time consumed in that function would be reduced from 32 hours to four hours, thus reducing the 16% time spent on agency work down to 14%.

28. The unit time study is based on statistics prepared in 1974 and 1975 studying agents' work at other stations in Minnesota. The averages used in this study are, therefore, not necessarily precise with regard to the time actually spent at Kelly Lake. Nonetheless, for purposes of their use in the proceeding, they are adequately accurate.

29. The Kelly Lake agent did perform overtime work in order to accommodate the scheduling needs of the local switching train.

30. The Kelly Lake station has been a profitable operation for the Railroad. The Railroad computes total assignable revenues of \$36.7 million in 1991, \$36.3 million in 1992, and \$18.6 million in the first six months of 1993. Total expenses for those periods were \$32.4 million in 1991, \$31.3 million in 1992, and \$16.0 million for the first six months of 1993. That results in a net profit of \$4.2 million in 1991, \$5.0 million in 1992, and \$2.6 million for the first six months of 1993. Those figures represent operation from Kelly Lake and its assigned blind sidings. If the blind sidings were eliminated, and revenues and expenses limited only to Kelly Lake itself, there is a loss of roughly \$60,000 each year.

Based upon the foregoing Findings, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Transportation Regulation Board has jurisdiction over the subject matter of this hearing. Proper notice of the hearing was timely given, and relevant substantive and procedural requirements of law or rule have been fulfilled as to properly place the matter before the Administrative Law Judge and the Board.

2. The granting of the Petition will not substantially reduce the level of safety, health or welfare of the Railroad's customers, its employees, or the public.

3. The public convenience and necessity does not require the maintenance of the Kelly Lake agency in its current form. Transfer of the services from Kelly Lake to Superior, Wisconsin, does not impair the public convenience and necessity, so long as steps are taken to assure adequate communications between customers, local trains, and the Superior agency.

THIS REPORT IS NOT AN ORDER AND NO AUTHORITY IS GRANTED HEREIN. THE TRANSPORTATION REGULATION BOARD WILL ISSUE THE ORDER OF AUTHORITY WHICH MAY ADOPT OR DIFFER FROM THE FOLLOWING RECOMMENDATIONS.

Based upon the foregoing, the Administrative Law Judge respectfully recommends to the Board that it issue the following:

ORDER

That the Petition of Burlington Northern Railroad Company for authority transfer agency service for the Kelly Lake agency to Superior, Wisconsin, be GRANTED; but that the agency service not be transferred until there is a radio communication system installed and operating so that the Superior agency is able to immediately communicate with the Kelly Lake switching crew;

That the Railroad must provide free telephonic access to its Superior agency for customers previously served at Kelly Lake; and

That the Railroad shall not otherwise reduce the quality of service provided to patrons in the area affected in comparison to the service provided to them in the past.

Dated this 4th day of February, 1994.

s/ Allan W. Klein
ALLAN W. KLEIN
Administrative Law Judge

Reported: Tape Recorded, one tape.

MEMORANDUM

The only real question is whether or not the public convenience and necessity requires that the Railroad have its new radio system in operation before the Kelly Lake agency is transferred. The Administrative Law Judge has determined that the radio contact is required, given Virginia's reliance upon the Railroad for "just-in-time" coal deliveries. While the problems in November can be attributed primarily to a new employee in Superior, the problems would have been solved quicker and better if the direct radio system had been available. Reliable electric power is critical in the winter months in northern climates. The Railroad and the power plant have worked out a system of dependable coal deliveries. The direct radio contact is a component of that delivery system, especially in the absence of experienced personnel. The Railroad has already decided to install the radio and has ordered the equipment. It had hoped to have it up and running last fall. It will be installed this spring. It makes sense to delay the actual transfer until the radio system is in place, so that the Superior clerks will have the same capabilities that the Kelly Lake agent currently possesses. On balance, it is necessary to delay the transfer until the radio contact is available from Superior.

A.W.K.